

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

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Refer Reply To:

CC:FIP:2 – PLR-145147-08

Date:

March 06, 2009

In Re:

Legend:

Fund =

Depositor =

Trustee =

Seller 1 =

Seller 2 =

Servicer =

Preparer =

Accountant =

Date 1 =

Dear _____ :

This is in reply to a letter dated October 10, 2008, requesting on behalf of Fund an extension of time under section 301.9100-1 of the Procedure and Administration Regulations to file an income tax return in order to make an election under section 860D(b)(1) of the Internal Revenue Code to be treated as regulated mortgage investment conduit ("REMIC").

FACTS

Fund was established on or about Date 1 by agreement between Depositor, Seller 1, Seller 2, Servicer, and Trustee. Fund was established to facilitate the securitization of REMIC regular interests created upon the conveyance of certain mortgage loans to Depositor from Seller 1 and Seller 2.

Pursuant to a Trust Agreement, Fund issued five classes of certificates designated as regular interests and one class of certificates designated as a residual interest. The Trust Agreement states the intention of Fund to make two REMIC elections, creating one Master REMIC and one Subsidiary REMIC.

A former assistant treasurer with Trustee filed Form SS-4, "Application for Employer Identification Number," and Form 8811, "Information Return for Real Estate Mortgage Investment Conduits (REMICs) and Issuers of Collateralized Debt Obligations," based on a preliminary version of the Trust Agreement. That version provided only for one REMIC, the Master REMIC. That version did not provide for a second REMIC, the Subsidiary REMIC.

Trustee engaged Preparer to prepare REMIC tax returns and elections. Trustee sent Preparer only the preliminary Trust Agreement, which reflected only the Master REMIC. Trustee did not indicate that the Trust Agreement that was sent was only a preliminary agreement. Consequently, Preparer prepared only a single Form 1066, for Master REMIC, for the taxable year _____.

Preparer engaged Accountant to review and sign the REMIC tax returns for Fund. Accountant reviewed and signed Form 1066 for Master REMIC for _____. Trustee filed Form 1066 and made a REMIC election for Master REMIC for _____. No Form 1066 was filed and no REMIC election was made for Subsidiary REMIC for _____.

Trustee had obtained the final version of the Trust Agreement, which reflected the creation of Subsidiary REMIC, before it filed Form 1066 for Master REMIC for _____.

However, Trustee did not detect the change that provided for the formation of Subsidiary REMIC.

Trustee filed Form 1066 for Master REMIC for , but no Form 1066 was filed for Subsidiary REMIC for .

During an internal audit in late , Trustee discovered that no returns had been filed for Subsidiary REMIC for and . Trustee began discussions with Preparer and Accountant about actions that could be taken to correct the oversight. Accountant began the process of requesting supporting information and preparing a request for a private letter ruling for relief under section 301.9100 of the regulations.

Fund has submitted the affidavit of Trustee's former assistant treasurer in support of this requested ruling.

Fund makes the following representations:

1. The request for relief was filed by Fund before the failure to make the regulatory election was discovered by the Service.
2. Granting the relief will not result in Fund having a lower tax liability in the aggregate for all years to which the regulatory election applies than Fund would have had if the election had been timely made (taking into account the time value of money).
3. Fund does not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of the Code at the time Fund requested relief and the new position requires or permits a regulatory election for which relief is requested.
4. Being fully informed of the required regulatory election and related tax consequences, Fund did not choose to not file the election.

LAW AND ANALYSIS

Section 860D(b)(1) of the Code provides that an entity otherwise meeting the requirements of a REMIC under section 860D(a) may elect to be treated as a REMIC for its first taxable year by making an election on its return for that year. Section 1.860D-1(d) of the regulations provides that a qualified entity elects REMIC status by timely filing a Form 1066, U.S. Real Estate Mortgage Investment Conduit Income Tax Return, by the 15th day of the fourth month following the close of the first tax year of its existence. This regulation also provides a reference to section 301.9100-1 for rules regarding extensions of time for making elections.

Section 1.860F-4(b)(1) of the regulations provides that the due date and any extensions for filing a REMIC's annual tax return are determined as if the REMIC were a partnership. Therefore, pursuant to section 1.6031-1(e)(2), a REMIC's annual return must be filed on or before the 15th day of the fourth month following the close of the taxable year, unless an extension is granted.

Section 301.9100-1(c) of the regulations provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in section 301.9100-1(b) as an election whose deadline is prescribed by regulations or by a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin), or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3(a) through (c)(1)(i) of the regulations sets forth rules that the Internal Revenue Service generally will use to determine whether, under the facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of section 301.9100-2. Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of section 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith; and section 301.9100-3(c) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

CONCLUSION

Based upon the facts and representations submitted, we conclude that Fund has shown good cause for granting a reasonable extension of time to elect to be treated as a REMIC under section 860D(b)(1).

Accordingly, Fund is granted 45 days from the date of the issuance of this letter to file a return for its initial taxable year ended December 31, making an election to be treated as a REMIC.

This ruling is limited to the timeliness of the filing of Fund's income tax returns for purposes of the election under section 860D(b)(1) of the Code. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. No opinion is expressed with regard to whether Fund otherwise qualifies as a REMIC under subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of Fund is not lower in the aggregate for all years to which the election applies than such tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the federal income tax returns involved, the director's office will determine such tax liability for the years involved. If the director's office determines that such tax liability is lower, that office will determine the federal income tax effect.

Except as specifically provided otherwise, no opinion is expressed on the federal income tax consequences of the transaction described above.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the terms of a power of attorney on file in this office, this original letter is being sent to you and a copy of this letter is being sent to your authorized representative.

Sincerely yours,

Thomas P. Preston
Thomas M. Preston
Senior Counsel, Branch 2
Office of Associate Chief Counsel
Financial Institutions & Products